IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

MFA.No. 646 of 2000(A)

O.P(MV).NO.1513/1996 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR.
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APPELLANT/ PETITIONER:

P. PARAMESWARAN, S/O. KITTU NAIR,
RESIDING AT MADHAVI NILAYAM,
MINALOOR.P.O., M.G. KAVU,
THRISSUR DISTRICT.

BY ADV. SRI.V.CHITAMBARESH.

RESPONDENTS/ RESPONDENTS:
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1. K.R. KUMARAN, S/O. K.K. RAMAN,
RESIDING AT KUMAR NIVAS,
PARUTHIPULLI.P.O.,
PALAKKAD DISTRICT.

***2. ABDUL HAKIM, S/O. VELLAKUTTY, RESIDING AT**
KUNNATH PARAMBU HOUSE, PERINGOTTUKURUSSY,
PALAKKAD. *(DELETED)

3. UNITED INDIA INSURANCE COMPANY LIMITED,
PALAKKAD.

***THE NAME OF 2ND RESPONDENT IS DELETED FROM PARTY ARRAY VIDE ORDER DATED 27/09/2007 ON I.A. 2075/2007.**

BY ADV. SRI.M.A.GEORGE.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

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M.F.A.No.646 of 2000

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Dated this the 13th day of December, 2007

J U D G M E N T

J.B.Koshy, J.

The appellant claimant met with an accident while he was riding a motor cycle. It is his case that jeep driven by the second respondent and insured by the third respondent hit the motor cycle and he sustained serious injuries which resulted in amputation of left leg at the knee level. He claimed a compensation of Rs.3,50,000/-. The Tribunal found that there is 10% contributory negligence on his part, therefore, after assessing compensation of Rs.1,35,100/-, 10% was deducted and the appellant was allowed to realise Rs.1,21,590/- with interest and cost. The finding of contributory negligence and the quantum of compensation awarded are disputed in this appeal.

2. Considering the reasoning of the Tribunal and evidence adduced in this case, we are of the opinion that finding

of contributory negligence is fully justified and no interference is required.

3. As far as injuries are concerned, the issue was discussed by the Tribunal in paragraph (11).

> "The petitioner who had sustained injuries was rushed to District Hospital, Palakkad as evident from Ext.A2 wound certificate. Examination revealed that he had sustained fracture to both bones of left leg below knee and fracture to maxillary bones. Ext.A3 certificate issued by the Department of Orthopaedics, Medical College Hospital, Thrissur would reveal that subsequently he was taken to Medical College Hospital, Thrissur. Ext.A4 is the discharge summary issued by the Medical College Hospital which would reveal that he had sustained a popliteac artery injury left, comminuted fracture to both bones of left leg, fracture to second meta carpal left, fracture to maxilla left, fracture to lateral condyle of left humerus, loss of four teeth on the upper side and soft tissue injury. He, who was admitted on 16/08/1996 was discharged on 04/10/1996. Amputation of the left leg was done

> through the left knee and skin grafting was done. POP immobilisation was given to left elbow. Alviolar fracture was treated by wire fixation.

Thereafter, it was further held by the Tribunal as follows:-

> "The petitioner has produced Ext.A6 certificate which states that he is having a permanent disability of 80%. But, I am not inclined to accept the said certificate because it was not properly proved. It is true that the left leg of the petitioner was amputated at the knee level. So, the percentage of disability in such cases will be 40%.

We are of the opinion that there was no valid reason stated by the Tribunal in refusing to accept the disability assessed by the qualified physical medical practitioner. According to the appellant, in view of the amputation of leg, though physical disability assessed by the doctor is 80%, loss of earning power is 100%. If the Tribunal doubted the medical certificate assessed percentage of disability as 80%, he could have sent the appellant to the Medical Board. We are of the opinion that at least statutory percentage of earning capacity fixed under the Workmen's Compensation Act could have been taken for

guidance. Under the above Act the amputation below middle thigh, 8.8 cms below knee, loss of earning power is 60%. So, we are of the opinion that compensation can be assessed for 60% disability and loss of earning power instead of 40% as fixed by the Tribunal. According to the counsel for the appellant, the injured was aged 45 years and Tribunal fixed 13 as the multiplier. Under the 2nd Schedule, for a person aged 45 to 50 the apt multiplier is 13. We see no ground to enhance the multiplier fixed by the Tribunal.

4. According to the appellant, he was doing business of selling household articles and earning Rs.5,000/- per month. However, no evidence was produced to prove the same and his oral testimony was also not controverted. Considering the totality of the evidence we are of the opinion Rs.1,500/- taken as monthly income by the Tribunal is very low. Considering the fact that he was 46 years and has to maintain his family, his future prospects, year of accident 1996 etc, we fix Rs.2,500/- as the monthly income. If that is so, the compensation for disability and loss of earning power will be Rs.2,500 x 12 x 13 x $^{60}/_{100}$ = Rs.2,34,000/-.

Tribunal has granted only Rs.93,600/- so, additional compensation payable will be Rs.1,40,400/-. Out of the above amount, 10% for contributory negligence has to be deducted, therefore, compensation payable to the appellant will be Rs.1,26,360/-. The above additional amount should be deposited by the third respondent Insurance Company with 7.5% interest from the date of application till its deposit over and above the amount decreed by the Tribunal. On deposit of the same, the appellant is allowed to withdraw the same.

M.F.A is partly allowed.

(J.B.KOSHY, J UDGE)

(K.HEMA, J UDGE

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J.B.KOSHY & K.HEMA, JJ.

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M.F.A.No.646 of 2000

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J U D G M E N T

13th December, 2007